

STATE OF MICHIGAN
COURT OF APPEALS

SHERI L. GENT,

Claimant-Appellee,

v

PRIDE AMBULANCE COMPANY,

Respondent,

and

DEPARTMENT OF CONSUMER & INDUSTRY
SERVICES and BUREAU OF WORKERS' &
UNEMPLOYMENT COMPENSATION,

Respondents-Appellants.

UNPUBLISHED

January 12, 2006

No. 252912

Berrien Circuit Court

LC No. 03-003385-AE

Before: O'Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Respondents Department of Consumer & Industry Services and Bureau of Workers & Unemployment Compensation appeal by leave granted from a judgment of the circuit court reversing the Employment Security Board of Review's decision denying claimant unemployment benefits. We affirm, albeit on grounds different than those cited by the court below. This case is being decided without oral argument under MCR 7.214(E).

Claimant was employed as a paramedic by respondent Pride Ambulance (Pride). In September 2002, approximately five months after she began to work for Pride, claimant informed her employer that she could no longer work Saturdays because that was her Sabbath day. Claimant is a Seventh-Day Adventist. It appears that claimant had regularly worked Saturdays, but decided to discontinue the practice. Arrangements were made for claimant to go to a part-time schedule after Saturday, October 5, 2002. Pride found a replacement worker for September 28 but not for October 5. When claimant informed her general manager that she would not come to work on October 5, she was informed that such an action would be considered "job abandonment." Claimant did not come to work on October 5. She turned in her uniform the following Monday. Claimant's subsequent application for unemployment benefits was denied. The circuit court reversed, reasoning that the case at hand was controlled by this

Court's decision in *Key State Bank v Adams*, 138 Mich App 607; 360 NW2d 909 (1984). Without reaching the issue of *Key State Bank's* continued validity, we affirm.

As in the circuit court,¹ respondent bureau has raised the controversial issue of the evolution of First Amendment free exercise jurisprudence. However, relating and analyzing the relatively recent developments in this area of constitutional law is an unnecessary exercise in this case. See *VandenBerg v VandenBerg*, 231 Mich App 497, 499; 586 NW2d 570 (1998) (observing that before reaching constitutional questions this Court “generally must examine alternative, nonconstitutional grounds that might obviate the necessity of deciding” them). This case, at its heart, involves application of the Michigan Employment Security Act (MESA), MCL 421.1 *et seq.*, and the rules promulgated for its enforcement. Regardless of the existence and application of general rules protecting the free exercise of religion, the clear language of specifically applicable employment security rules supports an award of unemployment benefits in this case.

The MESA serves a remedial purpose by providing benefits to those involuntarily unemployed. *Korzowski v Pollack Industries*, 213 Mich App 223, 228-229; 539 NW2d 741 (1995). Although we generally construe the act liberally, we narrowly construe disqualification provisions. *Id.* at 229. The portion of the MESA that disqualifies an applicant for benefits following voluntary unemployment provides, in relevant part, as follows:

An individual is disqualified from receiving benefits if he or she:

(a) Left work voluntarily without good cause attributable to the employer or employing unit. An individual who left work is presumed to have left work voluntarily without good cause attributable to the employer or employing unit. An individual claiming benefits under this act has the burden of proof to establish that he or she left work involuntarily or for good cause that was attributable to the employer or employing unit. [MCL 421.29(1).]

The Michigan Employment Security Commission, through its Director and pursuant to statutorily delegated authority, has promulgated rules for proper implementation of the MESA, including MCL 421.29. “A rule adopted by an agency in conformance with the Administrative Procedures Act, MCL 24.201 *et seq.*, is a legislative rule which has the force and effect of law.” *Morley v Gen Motors Corp*, 252 Mich App 287, 290; 651 NW2d 808 (2002). One of the Commission's rules, 1985 MR 6, R 421.209, provides as follows:

¹ The parties had argued about whether the holding of *Key State Bank* was still relevant in light of *Employment Div, Oregon Dep't of Human Resources v Smith*, 494 US 872; 110 S Ct 2157; 138 L Ed 2d 876 (1990). The circuit court declined to wade into the constitutional questions presented, concluding that in the absence of appellate authority stating that *Key State Bank* was no longer good law, it was required to follow it.

An individual shall not be deemed unavailable for work solely because, due to the precepts of his or her religion, the individual limits himself or herself to jobs not requiring work on his or her Sabbath. An individual who refuses to work on the Sabbath designated by his or her religion, or who is discharged from work or voluntarily leaves work, solely because of conscientious observance of the Sabbath as a matter of religious conviction shall not, for that reason, be disqualified from receiving unemployment benefits.

Based on the plain language of this rule, claimant was eligible for benefits. Claimant undisputedly asserts that she refused to work on October 5, 2002, because of her “conscientious observance of the Sabbath.” Respondents do not offer any justification for their failure to follow the established rule for resolving this benefits dispute. Accordingly, the circuit court’s reversal of the review board is affirmed, albeit on different grounds.

Affirmed.

/s/ Peter D. O’Connell

/s/ Michael R. Smolenski

/s/ Michael J. Talbot